

GOVERNMENT IMMUNITY AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas C. Aagard

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill modifies the Governmental Immunity Act of Utah by amending discovery provisions for a claim of injury against a governmental entity.

Highlighted Provisions:

This bill:

- ▶ provides that, in order to be exempted from the standard time that the statute of limitations begins to run, a claimant against a governmental entity must show that the claimant could not reasonably have known of the existence of the cause of action in time to file a claim within the limitation period; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63-30d-401, as last amended by Laws of Utah 2007, Chapter 329

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63-30d-401** is amended to read:



**63-30d-401. Claim for injury -- Notice -- Contents -- Service -- Legal disability --
Appointment of guardian ad litem.**

(1) (a) Except as provided in Subsection (1)(b), a claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

(b) (i) The statute of limitations does not begin to run ~~[until a claimant knew, or with the exercise of reasonable diligence should have known:]~~ if a claimant:

(A) does not know, or with the exercise of reasonable diligence could not have known:

[(i)] (I) that the claimant had a claim against the governmental entity or its employee;
[and] or

[(ii)] (II) the identity of the governmental entity or the name of the employee[-]; and

(B) could not reasonably have known of the existence of the cause of action in time to file a claim within the limitation period.

(ii) A statute of limitations that is tolled under Subsection (1)(b)(i) begins to run when the claimant knew, or with the exercise of reasonable diligence should have known:

(A) that the claimant had a claim against the governmental entity or its employee; and

(B) the identity of the governmental entity or the name of the employee.

(c) The burden to prove the exercise of reasonable diligence is upon the claimant.

(2) Any person having a claim against a governmental entity, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.

(3) (a) The notice of claim shall set forth:

(i) a brief statement of the facts;

(ii) the nature of the claim asserted;

(iii) the damages incurred by the claimant so far as they are known; and

(iv) if the claim is being pursued against a governmental employee individually as provided in Subsection 63-30d-202(3)(c), the name of the employee.

(b) The notice of claim shall be:

(i) signed by the person making the claim or that person's agent, attorney, parent, or legal guardian; and

(ii) directed and delivered by hand or by mail according to the requirements of Section 68-3-8.5 to the office of:

(A) the city or town clerk, when the claim is against an incorporated city or town;

(B) the county clerk, when the claim is against a county;

(C) the superintendent or business administrator of the board, when the claim is against a school district or board of education;

(D) the presiding officer or secretary/clerk of the board, when the claim is against a local district or special service district;

(E) the attorney general, when the claim is against the State of Utah;

(F) a member of the governing board, the executive director, or executive secretary, when the claim is against any other public board, commission, or body; or

(G) the agent authorized by a governmental entity to receive the notice of claim by the governmental entity under Subsection (5)(e).

(4) (a) If an injury that may reasonably be expected to result in a claim against a governmental entity is sustained by a claimant who is under the age of majority or mentally incompetent, that governmental entity may file a request with the court for the appointment of a guardian ad litem for the potential claimant.

(b) If a guardian ad litem is appointed, the time for filing a claim under Section 63-30d-402 begins when the order appointing the guardian is issued.

(5) (a) Each governmental entity subject to suit under this chapter shall file a statement with the Division of Corporations and Commercial Code within the Department of Commerce containing:

(i) the name and address of the governmental entity;

(ii) the office or agent designated to receive a notice of claim; and

(iii) the address at which it is to be directed and delivered.

(b) Each governmental entity shall update its statement as necessary to ensure that the information is accurate.

(c) The Division of Corporations and Commercial Code shall develop a form for governmental entities to complete that provides the information required by Subsection (5)(a).

(d) (i) Newly incorporated municipalities shall file the statement required by Subsection (5)(a) at the time that the statement of incorporation and boundaries is filed with the

lieutenant governor under Section ~~[10-1-106]~~ 10-1-116.

(ii) Newly incorporated local districts shall file the statement required by Subsection (5)(a) at the time that the written notice is filed with the lieutenant governor under Section 17B-1-215.

(e) A governmental entity may, in its statement, identify an agent authorized by the entity to accept notices of claim on its behalf.

(6) The Division of Corporations and Commercial Code shall:

(a) maintain an index of the statements required by this section arranged both alphabetically by entity and by county of operation; and

(b) make the indices available to the public both electronically and via hard copy.

(7) A governmental entity may not challenge the validity of a notice of claim on the grounds that it was not directed and delivered to the proper office or agent if the error is caused by the governmental entity's failure to file or update the statement required by Subsection (5).

Legislative Review Note
as of 12-21-07 1:59 PM

Office of Legislative Research and General Counsel

H.B. 134 - Government Immunity Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
